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09/736,023	02/28/2001	Philip Edwin Howse	REF/HOWSE/09	5866

7590 12/01/2003  
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EXAMINER
ARK, DARREN W

ART UNIT	PAPER NUMBER
3643	

DATE MAILED: 12/01/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/736,023

Applicant(s)

HOWSE ET AL.

Examiner

Darren W. Ark

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-- Th MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-3, 5, 8-13, 23-27, 29-33, 35, 38, 39, 42, 43 and 46 is/are allowed.
- 6) ☒ Claim(s) 4, 6, 14, 16-22, 34, 36, 37, 40, 41, 44 and 45 is/are rejected.
- 7) ☒ Claim(s) 7, 15 and 28 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 4, 15, 16, 18-22, 24, 28, 34, 44 are objected to because of the following informalities:

Claim 4, line 3, "which" should be deleted.

Claim 7, line 1, "where the" should be replaced with "wherein a".

Claim 15, line 2, "insert" should be replaced "inert".

Claim 21, line 2, "01%" should be replaced with "0.1%".

Claim 28, line 2, "said" should be deleted.

Claim 34, line 3, "which" should be deleted.

Claim 44, line 2, "the" should be deleted.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4, 6, 14, 16, 18-22, 34, 36, 37, 40, 41, 44 are rejected under 35

U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim Claim 4, line 2, the term "a surface in the an area..." renders the claim vague and indefinite since "a zone of or within the housing" was set forth in

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claim 1. The phrase "of the zone of or within the housing" should be inserted after "in an area". Also the term "preferably" renders the claim vague and indefinite and the phrase "preferably a" should be replaced with "said".

In regard to Claim 6, line 1, "the" should be replaced with "a" since "pesticide or behaviour modifying chemical" was not previously set forth.

In regard to Claims 16 and 18-22, line 1, "pesticide" should be replaced with "pesticidal" in order to properly set forth the desired invention.

In regard to Claim 34, line 2, the term "a surface" was set forth previously in claim 30. The first occurrence of "a" should be replaced with "said". Also the term "preferably" renders the claim vague and indefinite and the phrase "preferably a" should be replaced with "said".

In regard to claim 36, the term "the pesticide or behavior modifying chemical" renders the claim vague and indefinite since "pesticidess and behavior modifying chemicalss" were set forth in claim 30. Also see claims 37, 40, 41, and 44 for the same problem.

In regard to Claim 40, line 2, the term "pesticide or behavior modifying chemical" was previously set forth in claim 30. The term "a" should be replaced with "the".

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claim 17, 45 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Geary 3,162,573.

Geary discloses a pesticidal composition (see Example 15; also see claims 13, 14) including particles (pellets) comprising a magnetic material (colloidal iron powder which is capable of being acted upon by a magnet) in admixture with a pesticide or behavior modifying chemical (see col. 3), or particles of a magnetic material coated with a pesticide or behavior modifying chemical (all components placed within a resin).

***Allowable Subject Matter***

6. Claims 1-3, 5, 7-13, 15, 23-33, 35, 38, 39, 42, 43, 46 are allowed.

7. Claims 4, 6, 14, 16, 18-22, 34, 36, 37, 40, 41, 44 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

8. The following is an examiner's statement of reasons for allowance:

In regard to claim 1, the prior art of record does not disclose the method of trapping insects comprising the step of coating a zone of or within the housing with a

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composition including particles comprising magnetic material, whereby an insect in contact with the composition becomes at least partially coated with the composition and is destabilized, thereby falling into the trapping area.

In regard to claim 23, the prior art of record does not disclose an insect trap comprising a zone of the housing or a zone within the housing comprising a magnetically polarized material and the zone being coated with a composition including particles comprising a magnetic material of opposite polarity to that of the magnetically polarized material.

In regard to claim 15, the prior art of record does not disclose a pesticidal composition which comprises composite particles each comprising a core of an inert substance and the core being impregnated or coated with a magnetic material.

In regard to claim 30, the prior art of record does not disclose a method of killing or controlling insects comprising the step of coating a surface with a composition including particles comprising a magnetic material in combination with an agent selected from the group consisting of pesticides and behavior modifying chemicals and allowing the insects to contact the coated surface whereby the insects become at least partially coated with the magnetic material and thereby become exposed to the agent acting to kill or control the insects.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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**Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wallach '960 discloses a method of coupling targeting molecules to lipid vesicles wherein lipophilic materials such as pheromones and organic pesticides can be encapsulated in the vesicles and that a diagnostic agent can be encapsulated therein such as magnetic particles (see claims 20 & 23).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Darren W. Ark whose telephone number is (703) 305-3733. The examiner can normally be reached on M-Th, 8:00am-6:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9326.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.



Darren W. Ark  
Primary Examiner  
Art Unit 3643

DWA